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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,451	04/20/2001	David Cortis	4232-4002	4838
7590 MORGAN & FINNEGAN, L.L.P. 345 Park Avenue New York, NY 10154-0053			EXAMINER CHAMPAGNE, DONALD	
			ART UNIT 3688	PAPER NUMBER
			MAIL DATE 08/20/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/839,451

Applicant(s)

CORTS ET AL.

Examiner

Donald L. Champagne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 213-228 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 213-228 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 May 2008 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 221-228 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. At the last two lines of claim 221, "a digital information waveform encapsulated in a series of RF sub-carriers" is new matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 213-220 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (US006192340B1) in view of Schumacher, Jr., et al. (US005615227A).
6. Abecassis teaches (independent claim 213) a method comprising:

receiving from at least one of multiple broadcasters (*a plurality of providers 411-413*, providing service by *radio 404*, col. 11 lines 1-19 and Fig. 4) broadcast schedule information (*Providing a broadcast schedule*, col. 16 lines 40-46) identifying broadcast information to be transmitted over specific channels at predetermined times (a "broadcast schedule" inherently identifies "broadcast information to be transmitted over specific channels at predetermined times");

analyzing the received broadcast schedule information (applying the *schedule/scheduling, music and information preferences*, col. 17 lines 37-42 and col. 20 lines 23-52) and, based upon the analysis, identifying supplemental digital data (*information 755*, col. 20 lines 59-61 and Fig. 7) to be provided to a broadcaster from among the at least one of the multiple broadcasters, the supplemental digital data being correlated (*coordinated*, col. 21 lines 63-67) to broadcast data such that both can concurrently be provided by the broadcaster; and

providing the supplemental digital data to the broadcaster (*a radio-on-demand provider system 411*, col. 11 lines 1-6, 12-19 and 22-44) the predetermined time for broadcast of the broadcast data as specified in the broadcast schedule information (col. 16 line 40-46) so that the broadcaster can concurrently broadcast both the broadcast data and the correlated supplemental digital data at the predetermined time.

7. Abecassis does not teach concurrently broadcasting both the broadcast data and the correlated supplemental digital data at the predetermined time as part of an in-band, on-channel transmission (IBOC transmission). Schumacher, Jr., et al. teaches concurrently broadcasting both the broadcast data and the correlated supplemental digital data at the predetermined time as part of an IBOC transmission (col. 1 lines 23-25). Under *KSR v. Teleflex* (82 USPQ 2d 1385), the combination would be obvious because prior art elements are being combined according to known methods to yield predictable results. Abecassis teaches every feature of the claims except IBOC transmission. Schumacher, Jr., et al. teaches IBOC transmission.
8. Abecassis also teaches at the citations given above claims 214-217 and 220. Abecassis also teaches claim 218 (at the end of the Abstract).
9. Abecassis also separately teaches (claim 219) multiple and multimedia presentations that can be simultaneously broadcast col. 5 lines 25-34 and 56-58). It is noted that the instant

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application also does not literally disclose "multiple multimedia" presentations that can be simultaneously broadcast.

10. Claims 221-228 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (US006192340B1).

11. Abecassis teaches (independent claim 221) a method comprising:

receiving from at least one of multiple broadcasters (*a plurality of providers 411-413*, providing service by *radio 404*, col. 11 lines 1-19 and Fig. 4) broadcast schedule information (*Providing a broadcast schedule*, col. 16 lines 40-46) identifying broadcast information to be transmitted over specific channels at predetermined times (a "broadcast schedule" inherently identifies "broadcast information to be transmitted over specific channels at predetermined times");

analyzing the received broadcast schedule information (applying the *schedule/scheduling, music and information preferences*, col. 17 lines 37-42 and col. 20 lines 23-52) and, based upon the analysis, identifying supplemental digital data (*information 755*, col. 20 lines 59-61 and Fig. 7) to be provided to a broadcaster from among the at least one of the multiple broadcasters, the supplemental digital data being correlated (*coordinated*, col. 21 lines 63-67) to broadcast data such that both can concurrently be provided by the broadcaster; and

providing the supplemental digital data to the broadcaster (a *radio-on-demand provider system 411*, col. 11 lines 1-6, 12-19 and 22-44) the predetermined time for broadcast of the broadcast data as specified in the broadcast schedule information (col. 16 line 40-46) so that the broadcaster can concurrently broadcast both the broadcast data and the correlated supplemental digital data at the predetermined time.

12. Abecassis does not teach concurrently broadcasting both the broadcast data and the correlated supplemental digital data at the predetermined time as part of a digital information waveform encapsulated in a series of RF sub-carriers. Because it would improve efficiency, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add concurrently broadcasting as part of a digital information waveform encapsulated in a series of RF sub-carriers to the teachings of Abecassis.

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13. Abecassis also teaches at the citations given above claims 222-225 and 228. Abecassis also teaches claim 226 (at the end of the Abstract).
14. Abecassis also separately teaches (claim 227) multiple and multimedia presentations that can be simultaneously broadcast col. 5 lines 25-34 and 56-58). It is noted that the instant application also does not literally disclose "multiple multimedia" presentations that can be simultaneously broadcast.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
16. The examiner's supervisor, James W. Myhre, can be reached on 571-272-6722. The fax phone number for all *formal* fax communications is 571-273-8300.
17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
18. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

15 August 2008

/Donald L. Champagne/
Primary Examiner, Art Unit 3688